



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

### Docket Number USCG-2020-0458

### RIN 1625-AA00

### Safety Zone; Apra Outer Harbor, Naval Base Guam

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a recurring safety zone for certain waters of Apra Outer Harbor. This action is necessary to provide for the safety of life on these navigable waters near Apra Harbor, Guam, during fireworks displays. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Guam (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0458 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Petty Officer Robert Davis, Sector Guam, U.S. Coast Guard; telephone 671-355-4866, email [wwmguam@uscg.mil](mailto:wwmguam@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

Navy MWR conducts a recurring fireworks display between 6 p.m. and 9 p.m. during the 1<sup>st</sup> week of July. The fireworks are launched from a barge positioned in Apra Outer Harbor. Hazards from firework display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Guam (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 190-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and of the navigable waters within a 190-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under its authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish this recurring safety zone from 6 p.m. to 9 p.m. during the first week of July. The safety zone would cover all navigable waters within 190 yards of the fireworks barge located in Apra Outer Harbor. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 6 p.m. to 9 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Apra Outer Harbor for 3 hours. The safety zone will impact a small section of the main channel for Navy traffic, however Navy traffic will be able to transit around the area safely. This is also the main traffic area for the Marianas Yacht Club in Sasa Bay, however vessels will be able to transit around the area safely. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting no more than 3 hours that would prohibit entry within 190 yards of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental

Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). Documents mentioned in this NPRM as being available in the docket, and public

comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1419 to read as follows:

#### **§ 165.1419 Safety Zone; Apra Outer Harbor, Naval Base Guam.**

(a) *Location.* The following areas, within the Captain of the Port Guam (COTP) Zone (See 33 CFR 3.70-15), all navigable waters on the surface and below the surface within 190 yards of the fireworks barge for the 4<sup>th</sup> of July celebrations at Polaris Point, Naval Base Guam. The barge will be anchored approximately 500 yards off the north tip of Polaris Point in Apra Outer Harbor.

(b) *Definition.* As used in this section, “designated on-scene representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and a Federal, State, and local

officer either designated by or assisting the Captain of the Port (COTP) Sector Guam in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in section §165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated on-scene representative.

(2) This safety zone is closed to all persons and vessel traffic, except as may be permitted by the COTP or a designated on-scene representative.

(3) Persons and Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated on-scene representative to obtain permission to do so. The COTP or a designated on-scene representative may be contacted via VHF Channel 16 or at telephone number (671) 355-4821. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated on-scene representative.

(d) *Enforcement period.* This safety zone will be enforced on a specific date during the 1<sup>st</sup> week of July from 6:00 p.m. to 9:00 p.m. annually, unless the event is delayed or cancelled due to weather. The Coast Guard will provide advance notice of enforcement and a broadcast notice to mariners to inform public of specific date.

Dated: March 16, 2021.

CHRISTOPHER M. CHASE,  
Captain, U.S. Coast Guard,  
Captain of the Port, Guam.

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